

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL E. SMITH, JR., # 414888,)	
)	
Petitioner,)	Case No. 1:05-cv-494
)	
v.)	Honorable Robert Holmes Bell
)	
KELLEAH KONTEH,)	
)	
Respondent.)	<u>ORDER</u>
)	

This is a habeas corpus proceeding brought by a state prisoner pursuant to 28 U.S.C. § 2254. Respondent has been ordered to file an answer to the petition by March 20, 2006. On February 2, 2006, petitioner filed a motion for summary judgment. Dispositive motions, such as motions to dismiss or for summary judgment, are generally inappropriate in a habeas corpus proceeding. *See Browder v. Director, Dep't of Corr. of Illinois*, 434 U.S. 257, 269 n.14 (1978); *Wilson v. Dretke*, No. 3:04-cv-933-R, 2005 WL 3534221, at * 3 (N.D. Tex. Nov. 30, 2005) (“[A] habeas petitioner may not properly pursue a motion for summary judgment.”); *Chavez v. Morgan*, 932 F. Supp. 1152, 1153 (W.D. Wis. 1996); *Atkins v. United States*, No. 88-5106, 1990 WL 126196, at * 3 (D.N.J. Aug. 27, 1990) (“Given the nature of a habeas corpus petition, motions for summary judgment are unnecessary, because petitions may be decided immediately by the court following submission of the pleadings, provided no material issues of fact exist.”). The court deems petitioner’s motion for summary judgment in the present case to be unnecessary, and the motion will be stricken. Accordingly:

IT IS ORDERED, on the court's own motion, that petitioner's motion for summary judgment (docket # 15) be and hereby is STRICKEN from the record. The court will review the habeas corpus petition on the basis of the answer and Rule 5 materials once they are filed.

DONE AND ORDERED this 8th day of February, 2006.

/s/ Joseph G. Scoville
United States Magistrate Judge